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January 31, 2006

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**VIA EMAIL AND FEDERAL EXPRESS**

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Re: Corporate Audit Agreement Final Report

Dear Danielle and Phil:

INVISTA S.à r.l. ("INVISTA") is pleased to submit its Final Audit Report pursuant to INVISTA's corporate auditing agreement with the United States Environmental Protection Agency ("EPA") (the "Audit Agreement").<sup>1</sup> INVISTA's audit process began over twenty months ago as a result of implementing our Compliance Assurance and Management Systems ("CAMS") process and finding significant potential non-compliance with benzene NESHAP requirements at two of INVISTA's Texas facilities. These events occurred within a few weeks of INVISTA's acquisition of twelve chemical manufacturing facilities in the United States from E. I. du Pont de Nemours Company, Inc. ("DuPont") as of April 30, 2004. INVISTA immediately responded by addressing the early violations detected at these two facilities and

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<sup>1</sup> The Audit Agreement consists of INVISTA's July 28, 2004 Letter to Mr. Robert Kaplan, Mr. Kaplan's August 12, 2004 response, and INVISTA's September 3, 2004 response. These letters were attached to the First Quarterly Report at Tab 1. INVISTA initially met with EPA to discuss this potential agreement on July 22, 2004.

embarking on a system-wide national audit of the newly acquired facilities in close coordination with EPA.

Since that time, INVISTA has completed over thirty audits at these facilities. We have identified over 800 exceptions and potential exceptions as a result of our audits and have largely corrected the substantive issues and systemic problems uncovered by the audits. In particular, more than 93% of the audit findings have been timely corrected, and the remaining open items are on track for completion within the time frames established with EPA.

Of the total number of audit findings (803), 129 findings, or approximately 16%, were determined not to be regulatory violations. Of the remaining 674 findings, 90% were determined to be associated with policies, practices and procedures that were instituted prior to INVISTA's ownership and continued after that date until audited and corrected. INVISTA has spent over \$13 million to date on these audit activities, and expects to incur significant additional costs to complete the corrective actions for the outstanding audit items.

As you know, INVISTA entered into the Audit Agreement voluntarily after self-discovery of the potentially significant noncompliance. All of our efforts were conducted promptly and with diligence and our audit activities have been summarized in regular reports to EPA and state agencies. At all times during this audit process, INVISTA has been forthcoming and worked in good faith with EPA. As a result of these efforts, environmental compliance and the systems that monitor and assure it have been improved dramatically at these facilities. This will result in long term improvements to environmental quality.

The extensive scope of INVISTA's auditing program inevitably led to the need for procedural guidance, regulatory interpretations, and other technical responses from EPA. EPA's responsiveness to INVISTA's requests has been a key factor in enabling INVISTA to accomplish its auditing goals within a very short time frame. We have appreciated EPA's willingness to work through these issues promptly and cooperatively with both INVISTA as well as the state agencies throughout the audit process.

Given INVISTA's responsible approach and status as new owner, INVISTA respectfully requests that EPA accept the information set forth in this Final Report and, aside from the outstanding items that are the subject of ongoing discussions with EPA and the states, accept the audit items as closed. Furthermore, assuming that INVISTA, EPA and affected states reach agreement on how to appropriately close the outstanding audit issues and that INVISTA implements the agreed upon corrective actions in a timely manner, we also believe that a penalty is not justified and should not be assessed for the past non-compliance identified and reported under the Audit Agreement. Therefore, we also respectfully request that EPA confirm that penalties are not appropriate in this circumstance. We look forward to concluding the audit program with EPA over the next few months.

## I. INTRODUCTION

On April 30, 2004, INVISTA acquired twelve (12) of the former DuPont chemical and nylon facilities in the United States and thereafter entered into the Audit Agreement under which this Final Report is being submitted. INVISTA has completed all of the comprehensive and focused audits under the Audit Agreement on the schedules committed to EPA. The extensive audit activities undertaken and completed demonstrate INVISTA's continuing commitment to implementing environmental programs that evaluate, achieve and ensure ongoing compliance with environmental requirements.

This Final Report is organized as follows.<sup>2</sup> Section II provides an overview of INVISTA's audit activities, including a summary of INVISTA's audit process. Audit activities are summarized in chronological order for each of the Quarterly Reporting periods, including the period since October 31, 2005. Specific audit findings and corrective actions are presented in the referenced attachments.

Section III presents detailed statistical information about the audit findings and corrective actions taken. In particular, Section III summarizes information such as the total number and type of violations, their frequency, duration and potential for environmental impact, the closure status of corrective actions, and the costs associated with INVISTA's audit activities.

Section IV addresses the more complex audit issues that INVISTA and EPA are continuing to discuss to develop appropriate corrective actions. These matters primarily include the benzene NESHAP and flaring issues at INVISTA's Texas facilities and the Prevention of Significant Deterioration ("PSD") findings at these and several other facilities. Section IV contains a summary of the current status of all of the audit findings that are on schedule to be corrected after January 31, 2006.<sup>3</sup> Section IV also summarizes the audit findings at each affected facility for which INVISTA has completed its corrective action steps but is awaiting a permit modification or other action by a regulatory agency.<sup>4</sup> Finally, Section IV describes INVISTA's intended path forward, after submittal of this Final Report, to resolve each of these audit findings with the appropriate regulatory agencies.

A Table of Contents for this Report appears at the end of this letter. Tab 1 contains several figures that depict some of the statistical information from the audit findings. Tab 2 contains a Table summarizing most of INVISTA's audit costs incurred as of December 31, 2005. Tabs 3 through 16 contain charts that present a summary of all of the audit findings and

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<sup>2</sup> This Final Report summarizes and supplements the previous Quarterly Reports, which were submitted to EPA on October 31, 2004, January 31, 2005, April 29, 2005, July 29, 2005, and October 31, 2005.

<sup>3</sup> These include the issues mentioned above as well as the state New Source Review ("NSR") air permits for the Texas facilities that are on permit amendment submittal schedules with TCEQ into 2006 and two recently identified TSCA CAMS findings. See Tab 18.A for a listing of these audit findings.

<sup>4</sup> See Tab 18.B for a listing of these audit findings.

corrective actions for each facility and each focused topic audited under the Audit Agreement.<sup>5</sup> Tab 17 contains copies of the extension requests and regulatory applicability letters submitted to EPA under the Audit Agreement since the Fifth Quarterly Report. Tab 18 contains summaries of the open audit findings and the corrective action schedules for these matters.

## II. OVERVIEW AND PRESENTATION OF AUDIT FINDINGS

### A. *Overview of All Audit Agreement Activities*

Since initiating the audit program in July 2004, INVISTA has completed eleven comprehensive environmental audits,<sup>6</sup> one pre-sale compliance audit,<sup>7</sup> and twenty-one focused audits, including the seven PSD/NSR audits.<sup>8</sup> INVISTA's audit process involved independent third party auditors as well as substantial internal and external resources to address and correct the audit findings. More specific information about the third party auditors INVISTA employed, the protocols used for our audits and corrective action activities, and the credentials of the auditors used for the comprehensive and focused audits, is set forth in the Audit Agreement correspondence (see footnote 1 herein), and in the Second Quarterly Report at Tabs 11 and 12.

As detailed further in Section III and at Tab 2, INVISTA has spent over \$13 million on its audit activities. Approximately one-third of this cost was for internal resources, with two-thirds spent on external resources such as contractors who assisted with corrective action projects, technical consultants and legal counsel. INVISTA is continuing to work with EPA and the states to develop appropriate resolution of the open audit items. Therefore, INVISTA has not yet incurred all of its anticipated corrective action costs. As a result, the cost information set

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<sup>5</sup> Please note that the audit findings are, in many cases, stated in the present tense, as was the appropriate protocol used by the auditors at the time of each finding. However, as noted in the corrective action entries for each finding, the conditions described in the findings were corrected and updated as detailed in each chart. INVISTA has retained the original audit finding language rather than alter this convention for purposes of this Final Report.

<sup>6</sup> INVISTA's audit activities included a high level review of the acquired facilities' compliance with the export notification requirements of the Toxic Substances Control Act ("TSCA"). The TSCA audit findings identified in this review process and in the facility audits are contained in this Report. INVISTA is negotiating a separate TSCA Audit Agreement with EPA to conduct a more comprehensive review of overall compliance with TSCA requirements by the former DuPont facilities.

<sup>7</sup> The eleven comprehensive audits were conducted at the following facilities: Victoria, Sabine and La Porte, Texas; Seaford, Delaware; Waynesboro and Martinsville, Virginia; Camden, South Carolina; Athens, Dalton and Calhoun, Georgia; and Chattanooga, Tennessee. The pre-sale audit was conducted at the formerly owned Kinston and Kentec, North Carolina facilities, which were sold as of September 30, 2004 to a wholly owned subsidiary of Unifi, Inc.

<sup>8</sup> The twenty-one completed focused audits consist of the following: the EPCRA Data Quality Review at all of the former DuPont facilities (1); the benzene NESHAP Stream Identification audits, the HON Focused audits, the Texas Chapter 115/VOC audits, and the Focused Emission/Releases audits at the Victoria, Sabine and LaPorte, Texas facilities (11); the PSD Audits at the Victoria, LaPorte and Sabine, Texas facilities and at the Camden, South Carolina, Seaford, Delaware, Waynesboro, Virginia and Chattanooga, Tennessee facilities (7); the Title V Audit at the Seaford facility (1); and the NSPS Subpart Db applicability review for Boiler Nos. 1-4, 7 and 8 at the Victoria facility (1).



forth in this Final Report does not represent the final total costs that INVISTA expects to incur pursuant to the Audit Agreement.

As noted above, of the 803 audit findings, 129 were determined not to be exceptions. Over 93% of the remaining findings have been corrected. Only 61 audit findings remain open, 26 of which (or approximately 43%) relate to the outstanding air quality issues at INVISTA's Victoria, Sabine and LaPorte, Texas facilities, and 27 of which (or approximately 44%) are the PSD audit findings that were identified during the latter phases of INVISTA's audit process. All audit activities under the Audit Agreement are considered closed as of this Final Report, except for these 61 outstanding items that will require corrective action after January 31, 2006, as discussed in Section IV this Report.

It is important to recognize that most of the key compliance issues associated with the significant audit findings at the Texas facilities -- benzene NESHAP, HON, flaring, wastewater conveyance systems and PSD -- were identified in the early phases of INVISTA's audit process.<sup>9</sup> As you are aware, given the complexity of the regulatory requirements and some of our operations, many of these issues are the subject of ongoing corrective action efforts. These efforts include identifying and analyzing the potential range and feasibility of possible technology and/or operational changes.

For example, INVISTA identified early in the audit process that the wastewater streams containing benzene at the Texas facilities were not properly identified. As a result, INVISTA undertook an intensive stream identification effort at the Victoria and Sabine facilities. This process involved both sampling streams and using process knowledge to assess whether benzene was present in the streams. As a result of this process, INVISTA identified over 4,000 additional benzene streams that had previously existed but had not previously been identified as benzene wastewater streams subject to the benzene NESHAP requirements.<sup>10</sup> This effort took over a year to complete. The benzene stream identification process (and similar phased technical efforts on other issues, such as HON and wastewater conveyance systems) was undertaken parallel to continuing to audit the facilities and correct hundreds of other findings. The stream identification process was a critical first step to bringing these facilities into compliance. Following completion of the stream identification process, INVISTA commenced engineering evaluations to begin identifying appropriate corrective actions for each facility.<sup>11</sup>

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<sup>9</sup> As EPA is aware, INVISTA has also disclosed audit findings at the Texas facilities to TCEQ pursuant to the state audit law (the Texas Environmental, Health, and Safety Audit Privilege Act, Tex. Rev. Civ. Stat. Ann. Art. 4447cc.), and has had an ongoing dialogue with TCEQ regarding the outstanding matters that are also the focus of our discussions with EPA. INVISTA has worked closely with EPA and TCEQ to ensure that the federal and state audit and regulatory processes remain coordinated as we work towards resolution with both agencies of the audit matters disclosed and corrected under the Audit Agreement and the Texas audit law, respectively.

<sup>10</sup> These streams include a significant number of maintenance streams not previously identified.

<sup>11</sup> INVISTA is now in the process of obtaining EPA's and TCEQ's concurrence with the proposed corrective actions. In the interim, INVISTA made adjustments to the existing benzene wastewater treatment processes at both facilities. For example, at the Victoria facility, INVISTA segregated leachate streams, decoupled the

The discussion below presents the quarterly auditing activity briefly and chronologically. It is important to understand that, while INVISTA was conducting the comprehensive and focused audits, INVISTA was closing out hundreds of audit items and undertaking the intensive technical review process necessary to develop the corrective actions described above. Below is a brief overview on a quarterly basis of all of the audit activities INVISTA conducted throughout the audit process.

***B. Overview of Audit Agreement Activities in the First through Sixth Quarters***

The discussion below summarizes the audit activities that occurred during each quarterly reporting period, the details of which appear in the Quarterly Reports previously referenced.

**1. First Quarter**

During the First Quarter, July through October 2004, INVISTA initiated and completed the comprehensive audits at the three Texas facilities and began the comprehensive corrective action activities for certain findings as described above, including the benzene stream identification process. INVISTA also conducted the pre-sale audit at the Kinston and Kentec, North Carolina facilities, initiated the field work for the focused EPCRA review at all of the acquired facilities, initiated its TSCA export notification compliance review, conducted a focused Title V air permit audit of the Seaford, Delaware facility, and began the comprehensive environmental audit at Seaford. INVISTA also met with EPA on August 16, 2004 to discuss the audit process and background information about the acquisition of the former DuPont facilities.

**2. Second Quarter**

In the Second Quarter, November 2004 through January 2005, INVISTA completed the EPCRA review of all affected facilities and the comprehensive audit of its Seaford facility, initiated the comprehensive audit at its Waynesboro, Virginia facility, initiated the PSD audit at its Victoria, Texas and Camden, South Carolina facilities, and initiated and largely completed the focused HON, Emission Release, and VOC audits at its Texas facilities. INVISTA continued the extensive benzene stream identification process and continued to address additional TSCA export notification issues. INVISTA also initiated a technical review process during the Second Quarter as part of our corrective action effort for the most significant audit findings. This technical effort was necessary to identify and evaluate technical and operational scenarios to address the compliance issues associated with flaring, benzene NESHAP, PSD and wastewater conveyance system regulatory requirements ("Technical Review Process").

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benzene flasher from the primary filter system and converted to dual carbon systems from single carbon systems. Throughout this process, INVISTA has kept EPA and TCEQ updated on these issues and has continued to seek the agencies' input on the corrective action approaches.

### **3. Third Quarter**

During the Third Quarter, February through April 2005, INVISTA completed the focused HON and benzene NESHAP audits at its LaPorte facility, continued the benzene stream identification efforts at the Victoria and Sabine facilities, and continued its Technical Review Process. These efforts, along with other corrective action activities, resulted in the identification of several additional benzene NESHAP and wastewater conveyance audit findings at the Texas facilities. In addition, INVISTA completed the PSD audits at the Victoria and Camden facilities and initiated discussions with EPA about these preliminary findings. INVISTA completed the comprehensive audit at the Waynesboro facility and began and completed the comprehensive audits at the Martinsville, Virginia and Camden facilities. In addition, INVISTA responded to EPA's February 7, 2005 information request and developed and submitted several compliance plans to address certain audit findings. INVISTA also met with EPA on April 21, 2005 to discuss the more complex audit findings and the strategy for addressing appropriate corrective measures for these issues.

### **4. Fourth Quarter**

In the Fourth Quarter, May through July 2005, INVISTA initiated and completed the comprehensive audits at its Chattanooga, Tennessee facility and its Athens, Calhoun and Dalton, Georgia facilities. Furthermore, INVISTA made substantial progress on completing the PSD audits for the Sabine, LaPorte, Seaford, Waynesboro and Chattanooga facilities. INVISTA met with EPA on July 18, 2005 to discuss the preliminary PSD findings for the downstream facilities, concerns with those findings, and progress on developing the necessary corrective measures for the complex air quality matters at its Texas facilities. In addition, INVISTA responded to EPA's May 9, 2005 information request, and submitted information on outstanding applicability determination requests previously made in conjunction with specific corrective actions for certain findings.

### **5. Fifth Quarter**

During the Fifth Quarter, August through October 2005, INVISTA completed the outstanding comprehensive and focused audits. INVISTA also initiated discussions with EPA regarding a separate TSCA Audit Agreement. INVISTA submitted the Woodlined Wastewater Conveyance System ("WWCS") Report to EPA and TCEQ to address a number of wastewater audit and CAMS findings at the Texas facilities. INVISTA submitted several applicability determination letters during the Fifth Quarter.

#### ***C. Update Since Fifth Quarterly Report***

Detailed summaries of the audit findings that remained open as of October 31, 2005, as well as the status of corrective actions related to each finding are included for each facility under

Tabs 3-16. The discussion below also summarizes the corrective action activities undertaken since October 31, 2005 for each facility and with respect to the PSD audit findings.

## **1. Victoria, Texas**

During the Third Quarter, the facility corrected Finding No. 20.1 by conducting emissions tests on Boiler No. 4. The test results demonstrated compliance with the control requirements of the NSPS rules, but also demonstrated that the boiler required continuous emissions monitoring system ("CEMS") for NO<sub>x</sub>. Therefore, INVISTA submitted a compliance plan with respect to these requirements to TCEQ and EPA Region 6 on March 1, 2005. INVISTA has requested regulatory concurrence regarding the performance testing requirements for this CEMS given the unique operations associated with this boiler. INVISTA has received TCEQ concurrence, but has not yet received a response from EPA. As a result, INVISTA has requested until April 30, 2006 to complete testing and certification of the boiler in accordance with the plan previously submitted to TCEQ and EPA for review, as set forth in our January 20, 2006 correspondence.

INVISTA has concluded that Finding Nos. 26 and 27 (HON compliance issues) and Finding No. 28 (original PSD issue) can be closed by the actions taken to date to comply with the HON requirements at this facility and because the PSD question raised in the original audit has been evaluated as part of the PSD audit for Victoria. HON Finding No. 1 related to whether the NRU and NSC are process vents under the HON and the associated identification of regulated waste streams. INVISTA received a letter from EPA dated December 20, 2005 that concurs with INVISTA's analysis that the NSC is not a HON-regulated process unit (the NRU remains shut down and will not be restarted). Thus, the only open issue that INVISTA is continuing to evaluate is the status of one waste stream to determine its status under the HON as Group 1 or 2. As noted in INVISTA's January 20, 2006 letter, this audit finding is subject to a current extension request until August 31, 2006 to complete the appropriate corrective action.

INVISTA concluded that NSPS Subpart NNN did not apply to the SP-1 and SP-2 distillation columns (Finding No. 30(2)) or the Concentrated Wash Water System in the Adipic Acid Unit (PE No. 5). INVISTA submitted a regulatory applicability request and received correspondence dated August 29, 2005 from EPA seeking additional information (a copy is enclosed at Tab 17). On November 16, 2005, INVISTA submitted a response with the additional information requested by EPA. Absent a contrary determination by EPA, INVISTA considers these audit findings resolved.

As noted in the September 30, 2005 WWCS Report, INVISTA's extensive review did not identify noncompliance under hazardous waste or Clean Water Act ("CWA") requirements. However, the WWCS Report identified areas of potential improvement or regulatory clarification that INVISTA could pursue as part of the Texas Pollutant Discharge Elimination System ("TPDES") permit renewals that were underway or scheduled to begin at each of the Texas facilities. On November 30, 2005, INVISTA submitted to EPA a list of facility-specific



TPDES permit action items that INVISTA intends to pursue or is actively addressing in each of the affected facility's respective TPDES permit renewals (see copy attached at Tab 17).

As previously reported in several of the Victoria CAMS findings, a number of state NSR permits at the Victoria facility require amended permit applications, some of which were submitted in 2005. Based on a December 20, 2005 meeting with TCEQ, INVISTA developed an updated schedule for submitting the remaining permit amendments to correct these findings. This new schedule was set forth in INVISTA's January 20, 2006 correspondence and is included in Tab 18.A.

## **2. Sabine, Texas**

INVISTA is continuing its efforts to evaluate Sabine CAMS No. 9, which involves certain boiler waste generation issues. This matter is currently subject to a February 28, 2007 extension request date to identify the appropriate corrective action for the outstanding audit items. Sabine Self-Identified No. 4 and CAMS No. 10 each involve NSR permit issues like those at Victoria discussed above and are subject to the updated schedule set forth in Tab 18.A.

## **3. LaPorte, Texas**

There were two potential exceptions at the La Porte facility that remained open as of the end of the Fifth Quarter (CAMS PE Nos. 3 and 3.1). Both findings related to an intermittent wastewater discharge to the Inorganic Retention Basin ("IRB"). INVISTA submitted its regulatory analysis of these issues to EPA and TCEQ by letter dated October 31, 2005, a copy of which is attached at Tab 17. INVISTA's submittal concluded there are no non-compliance issues associated with PE Nos. 3 and 3.1. INVISTA has not received a response from either agency and assumes that the agencies concur with INVISTA's analysis and conclusions. Therefore, as previously reported, the facility plans to resume use of the IRB with its improved management procedures for this intermittent wastewater stream.

LaPorte CAMS No. 5 involves NSR permit issues like those at Victoria discussed above and is subject to the updated schedule for submitting the permit application amendments for the affected permits, as set forth Tab 18.A.

## **4. Seaford, Delaware**

INVISTA is continuing to implement the corrective action for Seaford Finding No. 12, which involves the design and construction of adequate secondary containment for certain Dowtherm storage areas. This project is on track with the current October 20, 2006 schedule to complete this corrective action. However, INVISTA intends to submit a written regulatory applicability determination to EPA on the issue of whether Dowtherm is an oil for purposes of the SPCC regulations in addition to information INVISTA previously evaluated. Further, on January 24, 2006, INVISTA learned the Seaford facility will need to submit a Title V air permit amendment to address a new issue involving Seaford Finding No. 20, which was previously

corrected. INVISTA's January 26, 2006 extension request letter (Tab 17) explains this issue and our schedule for submitting the necessary Title V documentation to resolve this matter.

## **5. Camden, South Carolina**

During the Fifth Quarter INVISTA identified a new CAMS finding (PE No. 1) at the Camden facility related to throughput values used in previously filed Title V permit applications. This finding was inadvertently not included in the Fifth Quarterly Report but was reported to EPA by letter dated November 28, 2005 (copy attached at Tab 17). This finding is currently subject to an extension request until May 31, 2006 to fully evaluate the issues and submit any necessary regulatory documentation.

## **6. Chattanooga, Tennessee**

INVISTA completed the corrective action for Finding No. 11 at the Chattanooga facility as of the extension date of November 30, 2005, but requested additional time to coordinate the corrective actions for Finding Nos. 14, 15 and 16 with DuPont, as these audit findings relate to DuPont's current operations at this location. These matters were corrected in December 2005. The facility also continued to evaluate possible corrective actions for Self-Identified Finding No. 1, which relates to certain past discharges under the facility's NPDES permit. This matter is subject to a current extension request date of June 30, 2006.

## **7. PSD Audits**

INVISTA completed the PSD Audit of the Sabine facility as of the November 21, 2005 extension request date. INVISTA also identified an additional PSD Potential Exception for the Waynesboro facility during the Fifth Quarter and reported this finding to EPA in correspondence dated November 3, 2005 (see attached copy at Tab 17).

## **8. Other Sixth Quarter Activities**

INVISTA responded to EPA's September 30, 2005 request for additional information by letter dated November 15, 2005 (see Tab 17). As noted, copies of all extension requests and regulatory applicability determination requests made since October 31, 2005 are also located at Tab 17. INVISTA's ongoing TSCA review identified two additional CAMS findings that are currently within their respective 60-day corrective action periods (see Tab 14.B) and are expected to be resolved on the schedules set forth in Tab 18.A for these items.

INVISTA's technical team met with EPA's technical team on November 9-10, 2005. The teams discussed technical issues related to potential corrective actions related to the PSD and benzene NESHAP findings. EPA requested additional information regarding emissions and control technology options during and following this meeting. INVISTA has been working diligently to gather this information and respond to EPA's request. INVISTA anticipates meeting with EPA again in March 2006.

In addition, in preparation for submittal of this Final Report, INVISTA compiled information on its audit costs as well as the type, frequency, duration and potential environmental impact of each audit finding. Results of this effort are reflected in Section III of this Report, as well as in the facility and issue specific charts at Tabs 3 - 16 that contain new information specifying the type of regulatory issue involved and the frequency and duration for each finding, as discussed in more detail in the next Section of this Report.

### **III. AUDIT STATISTICS: NEW INFORMATION FOR FINAL REPORT**

INVISTA's audit process identified 803 audit findings that are presented, along with the associated corrective actions, in the comprehensive charts incorporated into this Report. These audit findings include the exceptions and potential exceptions identified by INVISTA's auditors and the CAMS (self-identified) findings identified by INVISTA. As stated earlier, 129 of these 803 findings were deemed not to be exceptions. Of the 674 remaining findings, INVISTA has corrected over 93%, generally within 60 days or within the time allowed under an extension request. The audit items that remain open for corrective action are summarized in Section IV, below, and are on track for completion within the time frames established with EPA.

Furthermore, of the remaining 674 findings, 90% were determined to be associated with policies, procedures and practices that were in place prior to INVISTA's ownership (so-called "inherited" issues). Further, the few findings that occurred exclusively during INVISTA's ownership were of a type that could be and were readily corrected (*e.g.*, these findings did not present significant issues).<sup>12</sup>

INVISTA has estimated that it has spent over \$13 million to date on these audit activities and expects to incur significant additional costs to complete the corrective actions for the outstanding air quality audit items that are the subject of our ongoing discussions with EPA. Of the approximately \$13 million spent to date, roughly one-third was spent on INVISTA's internal resources (which have been estimated), such as corporate audit, technical and facility personnel, while the other two-thirds was spent on external expertise and assistance, including the preparation of permit and other regulatory submittals, preparation and meeting with agencies to address corrective actions and regulatory determinations, training of employees regarding new policies, plans and systems, purchase and installation of new or modified equipment, technical and engineering assistance, and outside legal counsel. The Table contained in Tab 2 presents the costs per facility as well as the additional costs associated with the overall audit process (*e.g.*, the TSCA and EPCRA audits) that are not captured in the facility-specific cost summaries.

As requested by EPA, INVISTA organized the audit findings into one of five types: Air, Waste, Water, TSCA, and EPCRA. These categories are designated for each finding in Tabs 3-16. On an overall basis, the audit findings were 40% Air, 21% Waste, 18% Water, 13% TSCA, and 8% EPCRA. See Tab 1 for figures depicting this information in further detail.

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<sup>12</sup> For example, these findings include technical deficiencies such as untimely notification of ownership changes and minor waste management labeling and recordkeeping discrepancies.

Also, as requested by EPA, INVISTA evaluated the actual and potential harm to human health and the environment posed by each audit finding, and determined that no audit findings presented these circumstances. With respect to the criterion of actual harm, INVISTA evaluated whether any audit findings represented a compliance condition that presented acute, near-term risks, and concluded that no such conditions existed with respect to any of the audit findings. With respect to the criterion of potential for harm, we concluded that INVISTA prevented any such conditions from occurring by identifying, disclosing and correcting the identified noncompliance and potential noncompliance conditions at the audited facilities.

The charts setting forth the facility and issue-specific audit findings (Tabs 3 - 16) contain information identified by the auditors that is relevant to the frequency and duration of the audit findings (*e.g.*, dates when an activity began or a regulatory submittal was not made or was erroneously made). In addition, INVISTA developed six categories, each with a different letter designation, by which we further characterized each audit finding as to frequency and duration.

INVISTA's specific approach to assessing frequency and duration was limited to (i) reviewing the relevant dates stated in the audit finding or developed as part of our corrective action activities, and (ii) further characterizing the frequency into one of five categories (A, B, C, D, and E, as defined below) based on available information. Where audit findings appeared to involve policies, practices and procedures that were in place prior to April 30, 2004 and continued after that date until audited and corrected, INVISTA has further identified these findings as "inherited" as noted in the chart entries (see category F, defined below). INVISTA has not conducted an independent investigation of the history of each finding, since the audit process in general was designed to focus on recent compliance status and INVISTA has only owned the facilities since April 30, 2004.

As a result of this review, each audit finding in Tabs 3 - 16 has a designation for frequency and duration assigned using the definitions set forth below. As a review of the charts will reveal, most findings have at least two categories assigned.

Frequency and Duration Categories:

- A: This category applies to audit findings for which the deficiency may have occurred from the time the violation commenced until corrected (assuming the affected facility, process or practice was in actual operation).
- B: This category applies to audit findings for which the deficiencies involved a missed or incomplete reporting or submittal requirement, or an action such as waste handling or characterization, that occurs on an annual or other specified interval or at intermittent times.
- C: This category applies to audit findings for which the deficiency has a start date exclusively after 4/30/04.



- D: This category applies to audit findings which occurred prior to 4/30/04 but were corrected after 4/30/04, in which the deficiency involves a one-time requirement (*e.g.*, notice, filing, record keeping, training, etc.) that was not made or documented prior to 4/30/04, or any such requirement that was made prior to 4/30/04 but was incomplete or deficient at the time made.
- E: This category applies to audit findings that were determined not to be violations or involved a typographical or other minor error, and thus were not assigned a frequency and duration.
- F: This category involves audit findings in which the deficiencies appear, based on the information available to INVISTA, to involve policies, practices and procedures that were in place prior to 4/30/04 and continued after that date until audited and corrected.

As noted, of the 803 total audit findings, 129 (or approximately 16% of the total) were determined not to be violations ("E" category). This leaves a total of 674 findings that required corrective action. Of these, 112 were assigned an "A" designation, 313 were assigned a "B" designation, 75 were assigned a "C" designation, and 198 were assigned a "D" designation.<sup>13</sup> Approximately 90% of the 674 findings were also assigned an "F" designation. As is apparent from a review of Tabs 3 - 16, even most "C" items also have an "F" designation that properly reflects that, although the deficiencies occurred after April 30, 2004, they arose from a practice, policy or procedure that was in place prior to April 30, 2004. The majority of findings are assigned either a "B-F" or "D-F" grouping, suggesting a prevailing theme of noncompliance that occurred on a more-than-once (B) or a one-time (D) basis, with a start date and duration that predates INVISTA's acquisition of the audited facilities.

Thus, a careful review of this information demonstrates that, in general, the circumstances creating the non-compliance reported under the Audit Agreement largely predate INVISTA's ownership, and that, under INVISTA's ownership, these inherited issues continued until the time that INVISTA identified the problem and corrected it.

#### **IV. OUTSTANDING CORRECTIVE ACTIONS AND PATH FORWARD**

The discussion below summarizes the outstanding audit findings for each facility from the comprehensive and focused audits. The outstanding PSD audit and TSCA review findings are addressed separately at the end of the facility-specific discussions. This Section ends with a summary of the path forward for the open audit items and those corrective actions for which INVISTA is awaiting action by a regulatory agency.

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<sup>13</sup> There are a few findings that were assigned a combined frequency and duration using that A - D codes (*e.g.*, a finding categorized as B, D and F based on the particular facts of that finding).

**A. *Victoria, Texas***

Audit Finding Nos. 1 - 5 and Subfindings 5.1 - 5.4 relate to the benzene NESHAP compliance issues identified in the original audit and subsequently as a result of corrective actions undertaken for the original audit findings, including the stream identification efforts discussed previously. As noted earlier in this letter, upon discovery of potential benzene NESHAP noncompliance at the facility, INVISTA conducted a comprehensive stream identification process that identified over 2000 streams that previously existed but had not been identified prior to April 30, 2004. INVISTA is using this information to develop appropriate corrective actions and is continuing to meet with EPA and TCEQ. In the interim, INVISTA has taken measures to bring the affected units into compliance such as shutting down the nitrile stripper column, segregating streams, installing dual carbon canister systems, and improving performance of the benzene flasher. These matters are currently subject to an extension request until February 28, 2007 to allow time for INVISTA, EPA and TCEQ to discuss and reach consensus on the appropriate corrective measures.

HON Finding No. 1 related to whether the NRU and NSC are process vents under the HON, and the identification of regulated waste streams. The only issue that INVISTA is continuing to evaluate is the status of one waste stream as Group 1 or 2. As noted in INVISTA's January 20, 2006 letter, this audit finding is subject to an extension request until August 31, 2006 to complete the appropriate corrective action.

Victoria CAMS Finding Nos. 6, 8, 12, 13 14 and 15 relate to the facility's NSR air permit amendments and are on the schedules for submittal that INVISTA recently provided to EPA in a letter dated January 20, 2006, as set forth in Tab 18.A.

**B. *Sabine, Texas***

Several of the outstanding findings at this facility relate to benzene NESHAP issues.<sup>14</sup> INVISTA will continue to discuss these matters with EPA and TCEQ in accordance with the updated schedule set forth in Tab 18.A. As set forth in the quarterly summaries above, INVISTA has completed a comprehensive stream identification process that identified over 2,000 streams at the Sabine facility that previously existed but had never been identified as benzene wastewater streams prior to April 30, 2004. In July and November 2005, INVISTA met with EPA's technical team to discuss the appropriate corrective actions and will continue to do so. In addition, INVISTA has taken interim measures to bring the facility into compliance with the benzene NESHAP requirements such as tagging additional components under the LDAR requirements, inspecting additional components, adjusting sampling locations and conducting monthly sampling. INVISTA intends to meet with EPA in March 2006 to continue to discuss the appropriate corrective measures.

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<sup>14</sup> The audit findings are Finding Nos. 22, 23, 24, 24.1-24.3, 27, 28 (1), and PE No. 9.

Self-Identified Finding No. 4 involves an NSR permit application that was previously submitted, but then withdrawn at TCEQ's request in March 2005. The new submittal date for this permit is April 28, 2006, as set forth in Tab 18.A.

Self-Identified Finding No. 9 relates to achieving the required destruction efficiency of the ADN start-up flare and the facility's inability to comply with some aspects of the HCN MACT due to design deficiencies with the flare. This finding is currently subject to an extension request until February 28, 2007 to identify appropriate corrective actions.

Sabine CAMS Finding No. 9 relates to hazardous waste and other regulatory issues raised by the formation of solids and a viscous liquid in and on certain of the Sabine facility boilers, as well as the management practices currently in place regarding these materials. INVISTA has identified the processes that may be creating these materials and possible short-term measures to alleviate these operating conditions. We continue to evaluate potential corrective actions to fully address these issues. However, all identified potentially feasible short-term options are not expected to completely eliminate the presence of the unwanted material. Therefore, by letter dated January 20, 2006 INVISTA requested additional time until February 28, 2007 to fully evaluate the relevant regulatory issues and to develop appropriate corrective measures to address this finding.

Finally, Sabine CAMS No. 10 involves NSR permitting issues similar to those previously summarized and is subject to the updated permit submittal schedule set forth in Tab 18.A.

**C.      *LaPorte, Texas***

The only outstanding audit item at the LaPorte facility is CAMS PE No. 5, which is also an NSR permit issue that is subject to the updated schedule set forth in Tab 18.A.

**D.      *Seaford, Delaware***

Seaford Finding No. 12 relates to the facility's plan and schedule for completing the necessary SPCC secondary containment for certain Dowtherm areas. This plan and schedule were set forth in INVISTA's April 8, 2005 correspondence to EPA. The facility is on track to complete the design and construction of the necessary secondary containment by October 20, 2006. As noted previously, INVISTA intends to submit a formal regulatory applicability determination request to EPA on the issue of whether Dowtherm is an oil for purposes of SPCC requirements. In addition, as outlined in INVISTA's January 26, 2006 extension request (Tab 17), Seaford Finding No. 20 is on track to be further corrected by May 31, 2006 (See Tab 18A).

**E.      *Camden, South Carolina***

The only outstanding item for the Camden facility is CAMS PE No. 1, which involves throughput information used in prior (pre-INVISTA) Title V permit applications. INVISTA is

still gathering and evaluating the factual information regarding this issue. This corrective action is currently subject to an extension request until May 31, 2006.

***F. Chattanooga, Tennessee***

The only outstanding finding for the Chattanooga facility relates to Self-Identified No. 1. This issue involves certain past wastewater discharges under the facility's NPDES permit and is currently subject to a June 30, 2006 extension request for INVISTA to develop any necessary long-term corrective action.

***G. PSD Audits***

INVISTA conducted PSD audits at the Victoria, Sabine and LaPorte, Texas and Seaford, Delaware, Waynesboro, Virginia, Camden, South Carolina and Chattanooga, Tennessee facilities. In all, there were 27 exceptions and potential exceptions identified by the PSD audit at these seven facilities.<sup>15</sup>

In July 2005, INVISTA met with EPA and presented the preliminary PSD audit findings for the facilities outside of Texas and discussed a strategy for developing appropriate corrective actions given the complexity of the findings and possible strategies for resolving them. EPA and INVISTA agreed that technical teams from INVISTA and EPA should meet to discuss the various options. The technical teams met at the Victoria facility on November 9-10, 2005. During and following this meeting, EPA requested additional technical information about the emissions at these facilities and various potential corrective measures. INVISTA is continuing to gather the detailed technical information requested.

All of the PSD audit findings are subject to an extension request until February 28, 2007. INVISTA hopes this will allow sufficient time for INVISTA to meet with EPA and state regulators to discuss these findings and develop appropriate long-term corrective actions. INVISTA appreciates EPA's continued cooperation in identifying the most appropriate means to address these issues.

***H. TSCA CAMS Findings***

As noted, INVISTA's ongoing TSCA review process identified two CAMS issues in January 2006, each of which is on track to be corrected within the relevant 60-day corrective action period but after January 31, 2006. INVISTA will correct and track these and any other

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<sup>15</sup> As INVISTA has previously stated, INVISTA is presenting the auditors' PSD findings based upon the protocol submitted to EPA. INVISTA is, nevertheless, reserving any and all factual and legal bases to refute, explain and/or mitigate these findings, such as the test for defining whether PSD requirements were triggered, the method for determining emissions, the applicability of statutes of limitation, whether any identified past noncompliance can be attributed to a subsequent owner, etc. In addition, INVISTA will continue to address these issues constructively and in further detail with EPA as part of our ongoing discussions.



TSCA review items that arise during the transition between our TSCA review activities under the Audit Agreement and the anticipated formal TSCA audit under a separate TSCA Audit Agreement that we and EPA are actively discussing. Therefore, INVISTA intends to report the resolution of these open TSCA 3APN items and any additional TSCA CAMS findings as part of our activities under the TSCA Audit Agreement.

### ***I. Path Forward***

Most of the open audit items identified above are the subject of proposed corrective actions that INVISTA continues to discuss with EPA. The remaining items are on corrective action paths as outlined in this Final Report. As stated earlier, INVISTA anticipates meeting with EPA again in March 2006 on the matters we are continuing to discuss.

In order to complete this Final Report, INVISTA submitted extension requests on January 20 and 26, 2006, which contain the updated corrective action dates for each open item. The corrective action dates for all open items, including those under active discussion with EPA, are set forth in Tab 18.A. The matters for which INVISTA has completed its corrective action and is awaiting regulatory action are set forth in Tab 18.B. INVISTA considers the matters listed on Tab 18.B closed.

## **V. CONCLUSION**

As summarized in this Final Report, INVISTA has engaged in a substantial effort and has incurred significant expense over the past twenty months to address the inherited compliance conditions at the former DuPont facilities pursuant to the Audit Agreement. INVISTA initiated this effort shortly following its purchase of these facilities as of April 30, 2004, after discovery of potentially significant noncompliance at the Texas facilities, and has diligently pursued this course of action, while at the same time striving to conduct its day-to-day operations in compliance with applicable regulations. INVISTA has made tremendous progress towards its environmental compliance assurance goals and requirements as a result of these activities, by identifying and correcting hundreds of findings in a timely manner. Moreover, INVISTA has been and will continue to address the audit findings that require more time for resolution in an open dialogue with regulatory authorities.

As the Audit Agreement activities wind down, INVISTA reiterates its appreciation for EPA's assistance and cooperation throughout this process and as we continue to work together to identify the final corrective measures that are appropriate to resolve the outstanding audit findings under the Audit Agreement.

Given INVISTA's responsible approach, good faith, and status as new owner, INVISTA respectfully requests that EPA accept the information set forth in this Final Report and, aside from the outstanding items that are the subject of ongoing discussions with EPA and the states, accept the audit items as closed. Furthermore, assuming that INVISTA, EPA and affected states reach agreement on how to appropriately close the outstanding audit issues and that INVISTA

Danielle Fidler, Attorney Advisor  
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implements the agreed upon corrective actions in a timely manner, we also believe that a penalty is not justified and should not be assessed for the past non-compliance identified and reported under the Audit Agreement. Therefore, INVISTA respectfully requests that EPA confirm that penalties are not appropriate in this circumstance.

We will, of course, address these outstanding matters in further detail with EPA as part of our ongoing discussions. INVISTA looks forward to concluding the audit program with EPA.

If you have any questions at this time, please call Tracey Mihelic at (316)-828-1655.

Sincerely,



Tracey L. Mihelic  
Chief Counsel, Environment, Health  
and Safety

Sincerely,



Sidney H. Johnson  
Global Environmental Capability Manager

Enclosures

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